

## **806 KAR 17:083. Kentucky long-term care partnership insurance program.**

RELATES TO: KRS 205.619, 304.14-120, 304.14-600 - 304.14-644, 42 C.F.R. sec. 1396p(b), 73 F.R. 30030, 51302

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-642(5), 304.14-644(2), EO 2008-507

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.14-642(5) requires the Office of Insurance to promulgate an administrative regulation to implement the Kentucky Long-Term Care Partnership Insurance Program and to establish the manner and content of a disclosure, in coordination with the Cabinet for Health and Family Services. EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as the head of the department. This administrative regulation defines terms and establishes requirements for long-term care partnership insurance, including a life insurance policy with a long-term care partnership insurance rider, notice, disclosure, policy exchange, training of an agent, reciprocity of a long-term care partnership insurance policy, and reporting long-term care benefits under a long-term care partnership insurance policy.

Section 1. Definitions. (1) "Agent" is defined by KRS 304.9-020(1).

(2) "Asset disregard" is defined by KRS 304.14-640(1).

(3) "Commissioner" means the Commissioner of Insurance.

(4) "Department" means the Department of Insurance.

(5) "Eligible policyholder" means a policyholder of a long-term care insurance policy, which:

(a) Was issued by the insurer on or after:

1. January 16, 2003, for a policyholder in the individual market; or

2. July 16, 2003, for a policyholder in the group market; and

(b) Meets the requirements of long-term care partnership insurance as established in:

1. KRS 304.14-642(2)(a) through (c); and

2. Section 2(2)(d) of this administrative regulation.

(6) "Federally tax-qualified" is defined by 806 KAR 17:081, Section 1(27).

(7) "Kentucky Long-Term Care Partnership Insurance Program" or "Partnership Insurance Program" is defined by KRS 304.14-640(2).

(8) "Long-term care insurance" is defined by KRS 304.14-600(2).

(9) "Long-term care partnership insurance" is defined by KRS 304.14-640(4).

(10) "Medicaid" means coverage in accordance with Title XIX of the Social Security Act, 42 U.S.C. secs. 1396 et seq., as amended.

(11) "Partnership exchange" means an exchange between an insurer and the insurer's eligible policyholder of an existing long-term care insurance policy, certificate, or rider for a long-term care partnership insurance policy, certificate, rider, or endorsement with substantially similar benefits.

Section 2. Long-Term Care Partnership Insurance Policy and Disclosure. (1) An insurer selling, issuing, or renewing a long-term care partnership insurance policy or certificate in Kentucky on or after the effective date of this administrative regulation shall obtain approval of a related form and premium rate from the commissioner pursuant to KRS 304.14-120, 806 KAR 14:005, and 806 KAR 14:007, as applicable.

(2) A long-term care partnership insurance policy, certificate, or rider shall:

- (a) Meet requirements as established in:
  1. KRS 304.14-600 through 304.14-644;
  2. 806 KAR 17:081; and
  3. This administrative regulation;
- (b) Be clearly identified as Kentucky long-term care partnership insurance, in not less than twelve (12) point type, on the first page of a long-term care partnership insurance policy, certificate, or rider;
- (c) Be delivered with a disclosure, which shall:
  1. Explain the benefits of a long-term care partnership insurance policy or certificate, including:
    - a. Asset disregard under the Kentucky Medicaid Program;
    - b. Status as a federally tax-qualified long-term care insurance contract; and
    - c. Inflation protection as identified in paragraph (2)(d) of this section;
  2. State that purchasing long-term care partnership insurance does not guarantee eligibility for Medicaid; and
  3. Inform the insured that:
    - a. A modification of a partnership insurance program policy, certificate, or rider may affect whether the:
      - (i) Policy, certificate, or rider continues to be a partnership insurance program policy; and
      - (ii) Insured continues to be eligible for asset disregard; and
    - b. If the insured moves to a state outside Kentucky which has entered into a reciprocity agreement pursuant to 73 F.R. 51302, the policyholder may be eligible for asset disregard in that state;
  - (d) Include for an individual, who has:
    1. Not attained sixty-one (61) years of age as of the date of purchase of the policy, an automatic annual inflation increase at a rate not less than three (3) percent calculated on a compound basis;
    2. Attained age sixty-one (61) to seventy-five (75) as of the date of purchase, an automatic annual inflation increase:
      - a. At a rate not less than three (3) percent calculated on a simple basis; or
      - b. That meets the requirements of subsection (2)(d)1 of this section; or
    3. Attained age seventy-six (76) as of the date of purchase, an offer of inflation protection in accordance with 806 KAR 17:081, Section 10; and
  - (e) Not be issued in Kentucky prior to the effective date of this administrative regulation.
- (3) For the disclosure identified in subsection(2)(c) of this section, an insurer shall use:
  - (a) The LTCPIP-1; or
  - (b) A disclosure developed by the insurer, which shall:
    1. Meet the requirements of subsection 2(c) of this section;
    2. Be entitled "Important Information About Your Kentucky Long-Term Care Partnership Insurance"; and
    3. Be filed with and approved by the commissioner prior to use.

Section 3. Partnership Insurance Program Notice. (1) For a prospective applicant, an insurer, which offers a long-term care partnership insurance policy, certificate, or rider, shall provide a partnership insurance program notice pursuant to KRS 304.14-644, which shall:

- (a) Be available electronically and in writing;
- (b) Be presented in clear and understandable language;
- (c) Include the following:
  1. A description of:

- a. The Kentucky Long-Term Care Partnership Insurance Program;
  - b. Long-term care insurance and services provided under a long-term care insurance policy and certificate; and
  - c. The Kentucky Medicaid Program, including eligibility for Medicaid benefits; and
2. Information regarding:
- a. Asset disregard;
  - b. A federally tax-qualified long-term care insurance contract;
  - c. Inflation protection as identified in Section 2(2)(d) of this administrative regulation; and
  - d. The impact on an insured's eligibility for asset disregard under a state Medicaid program if an insured moves to a state outside Kentucky; and
- (d) Include additional resource information, including the telephone number of:
- 1. The insurer, including a position or title for a contact who is knowledgeable of long-term care partnership insurance;
  - 2. The Kentucky Department of Insurance; and
  - 3. The Kentucky Department for Medicaid Services.
- (2) For the partnership insurance program notice, an insurer shall use:
- (a) The LTCPIP-2; or
  - (b) A partnership insurance program notice developed by the insurer, which shall:
    - 1. Meet the requirements of subsection (1) of this section;
    - 2. Be entitled "The Kentucky Long-Term Care Partnership Insurance Program Notice"; and
    - 3. Be filed with and approved by the commissioner prior to use.

Section 4. Agent Training. An insurer offering long-term care partnership insurance shall:

- (1) Require an agent prior to selling, soliciting, or negotiating a long-term care partnership insurance policy or certificate to:
  - (a) Demonstrate an understanding of long-term care partnership insurance as required under KRS 304.14-642(4); and
  - (b) Receive training in accordance with 806 KAR 9:220, Section 5(1); and
- (2) Maintain a record which supports compliance with the training requirements for an agent who sells, solicits, or negotiates long-term care partnership insurance, which shall be available:
  - (a) To the department, if requested; and
  - (b) For a period not less than five (5) years.

Section 5. Partnership Exchange of a Policy. (1) Within one (1) year of the date that an insurer begins to market long-term care partnership insurance in Kentucky, the insurer shall offer, in writing, the option for a partnership exchange to an eligible policyholder.

- (2)(a) An insurer shall complete a partnership exchange by issuing a:
  - 1. New long-term care partnership insurance policy or certificate, or rider attached to a life insurance policy; or
  - 2. Rider or endorsement to an existing long-term care insurance policy or certificate, which shall:
    - a. Be approved by the department as long-term care partnership insurance;
    - b. Include a new effective date of coverage; and
    - c. Amend the first page of the policy or certificate in accordance with Section 2(2)(b) of this administrative regulation.
- (b) In completing a partnership exchange pursuant to subsection (2)(a) of this section, the:
  - 1. Insurer shall not perform underwriting associated with the policy, certificate, rider, or endorsement;
  - 2. Premium rate charged for the policy, certificate, rider, or endorsement shall be deter-

mined using the original issue age and risk class of the insured, which were used to determine the premium rate of the existing policy, certificate, or rider; and

3. Insurer shall ensure that rights, benefits, and built-up value, which accrued under the original policy, are maintained, including credit for satisfying a:

- a. Pre-existing condition exclusion period;
- b. Elimination period; or
- c. Incontestability period.

(c) A policy, certificate, rider, or endorsement issued pursuant to this section shall not be reported as replacement as identified in 806 KAR 17:081, Section 12.

(3) An insurer shall:

(a) Offer a partnership exchange on a nondiscriminatory basis regardless of the age or health status of the policyholder or certificate holder;

(b) Allow the policyholder to elect an offer of partnership exchange not less than ninety (90) days from the date of mailing of the notice as identified in paragraph (c) of this subsection;

(c) Provide in the notice of an offer of partnership exchange:

1. A description of the effect on the insured's premium;
2. Identifying information relating to the insurer, insured, and policy;
3. Information regarding the requirements of a partnership insurance program policy;
4. A statement that the insured shall not:

a. Forfeit any rights, benefits, or built-up value, which accrued under the original policy pursuant to subsection (2)(b) of this section; and

b. Be guaranteed eligibility for Medicaid benefits;

5. Information required by Section 3(1)(c)2 of this administrative regulation;

6. Insurer contact information; and

7. Instructions for accepting the offer of exchange.

(4) For a notice as identified in subsection(3)(c) of this section, an insurer shall use:

(a) The LTCPIP-3; or

(b) A notice developed by the insurer, which shall:

1. Meet the requirements identified in subsection (3)(c) of this section;

2. Be entitled "Important Notice of Offer to Exchange"; and

3. Be filed with and approved by the commissioner prior to use.

Section 6. Insurer Reporting Requirements. An insurer offering life and health insurance in Kentucky, which participates in the Kentucky Long-term Care Partnership Program, shall:

(1) Collect and report data relating to long-term care partnership insurance to the Secretary of the U.S. Department for Health and Human Services:

(a) Pursuant to KRS 304.14-642(6); and

(b) In accordance with the state long-term care partnership insurance reporting requirements as established by 45 C.F.R. 144.200 through 144.214; and

(2) If a statement of benefits paid under a long-term care partnership insurance policy, certificate, or rider is requested by an insured or authorized representative of an insured, provide a completed LTCPIP-4, to the insured or authorized representative, within fifteen (15) days of the request.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Important Information About Your Kentucky Long-Term Care Partnership Insurance, LTCPIP-1", 12/2008;

(b) "The Kentucky Long-Term Care Partnership Insurance Program Notice, LTCPIP-2",

2/2009;

(c) "Important Notice of Offer to Exchange, LTCPIP-3", 2/2009; and

(d) "Long-Term Care Partnership Insurance Program Statement of Benefits Paid, LTCPIP-4", 2/2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site at <http://insurance.ky.gov>. (35 Ky.R. 1968; 2306; eff. 6-5-2009.)